



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNDC, FF

Introduction

This hearing dealt with applications by both the tenants and the landlord. The tenants seek an order setting aside a notice to end this tenancy and the landlord seeks an order of possession and a monetary order. All parties participated in the conference call hearing.

Issues to be Decided

Should the notice to end tenancy be set aside?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord's agent (hereinafter the "Agent") testified that the tenancy began on June 1, 2014 and rent was set at \$1,800.00 per month. The Agent testified that the tenants paid just \$1,000.00 of the rent due in the month of December 2014 and paid no rent whatsoever in the months of January – May inclusive. The parties agreed that on April 30, 2015, the landlord served on the tenants a 10 day notice to end tenancy for unpaid rent (the "Notice").

The tenant DH testified that he moved into the rental unit in June 2014 and that his portion of the rent was initially \$900.00 but then dropped to \$750.00 and finally to \$600.00. He testified that originally, one of the occupants of the rental unit was an individual named IJ. DH testified that throughout 2014 he paid his rent to IJ's mother, although somewhat sporadically as he was not always employed during that time. He stated that on January 1, he began paying his rent to the landlord and claimed that he made several cash payments and at least one payment via money order, although again these payments were sporadic as he did not have steady employment. DH testified that on April 10 he paid the landlord \$1,200.00 by money order and that he

recently offered more money to a property manager in some way associated with the landlord, but the manager refused that payment. The Agent denied any knowledge of any payments or offers of payment having been made by DH in 2014 and stated that she was unaware of IJ or of tenants having paid rent to IJ's mother in the past.

The tenant JF testified that he moved into the rental unit in July 2014 and that he too paid his portion of the rent to IJ's mother until January 1. He acknowledged that he has not paid rent for quite some time, but said that because he is friends with the landlord, the landlord has allowed him to delay payment of rent on occasion. He stated that on April 17 he had the cash to pay the landlord all of the arrears and he attempted to contact the landlord through a tenant who resides in the landlord's home, which is next to the rental unit, but did not receive a response.

NS testified that she began residing in the unit in December 2014 and she too paid her rent to IJ's mother. She testified that she was not expected to pay rent in December as she was homeless and unemployed, but once she was eligible for assistance benefits in January, she was expected to pay somewhere between \$300.00 - \$400.00 each month. She testified that in January, she paid IJ's mother a \$175.00 security deposit and \$375.00 for that month's rent. She testified that she paid her rent to IJ's mother in January and February and in March paid the landlord \$375.00 with a money order. She acknowledged that she has not paid rent since March but testified that this is because there has been a problem with payment of her benefits.

The landlord is seeking to recover rental arrears of \$10,000 which represents \$1,000.00 owing for the month of December and \$1,800.00 for each of the months of January – May inclusive as well as loss of income for the month of June. The agent noted that the landlord is only seeking a monetary award of \$5,000.00 as well as the \$50.00 filing fee paid to bring this application.

Analysis

The tenants have all acknowledged that they owed varying amounts of rent to the landlord. Although all of the tenants began paying rent to IJ's mother, they all acknowledged that at some point during the tenancy, the landlord became the party to whom they should rightfully pay rent. Although reason for and nature of the transition from IJ's mother to the landlord is unclear, all parties were in agreement that for DH and JF, they were obligated to pay rent to the landlord throughout 2015 and NS was obligated to pay rent to the landlord at the very latest beginning in March 2015.

The landlord served the tenants with the Notice as though they were co-tenants, but I find insufficient evidence to show that the tenants were co-tenants. They all moved into

the unit at different times, they appear to have no relationship with each other besides living in the same residence and they each pay their rent to the landlord individually. Typically, when tenants are co-tenants, service on one tenant is sufficient to end the tenancy for all and when they are not co-tenants, the landlord is required to serve each tenant individually with a separate notice as each tenancy is distinct. However, in this case, the tenants all understood that the Notice was intended to end their tenancy and I find that the landlord effectively communicated his intent to end all of the tenancies through service of the Notice and therefore the service of one notice is sufficient in these unique circumstances. Although only DH applied to dispute the Notice, because all tenants understood this dispute to be sufficient, I consider all of them to have disputed the Notice.

It is therefore my task to determine whether each of the tenants owed rent at the time the Notice was served and how much was owed.

DH claimed that he paid the landlord \$1,200.00 on April 10 via money order but did not provide a copy of that money order to corroborate his claim even though he knew through the service of the notice to end tenancy that the landlord was disputing having received that payment. He also did not provide proof that he had made any cash payments for monies owed during 2015 and acknowledged that he was in a position of rental arrears throughout much of 2014. I find insufficient evidence to prove that DH has paid rent for arrears accrued in 2015.

Although JF claims that he tried to pay the landlord, I do not find his account to be believable. The landlord lives next door to JF and although the landlord (according to JF) is only home every 2 weeks, I see no reason why JF could not have attended at the landlord's home in one of the weeks in which he was home to hand him the cash or obtained a money order to mail to him. Further, the Agent served the Notice on the tenants on April 30 and gave the tenants the Agent's mailing address as an address for service, at which they would accept an application for dispute resolution or payment of the arrears. Although JF claimed to have money in his hands, he chose not to pay the arrears within 5 days in order to cancel the Notice. I do not accept that JF attempted to pay the landlord the rental arrears.

NS claimed that she was not obligated to pay rent to the landlord until March 2015 and although she claimed to have paid the landlord in March using a money order, she did not provide proof of this payment. NS did not claim to have made any rental payments after March 2015.

I find that each of the tenants owed rent to the landlord at the time the Notice was served and they were aware that they owed rent but either chose not to pay or were

unable to pay because they did not have money available. I find that the landlord has establish grounds to end these tenancies and I therefore dismiss the application to set aside the Notice. **I find that the landlord is entitled to an order of possession and I grant him that order. The order must be served on the tenants. If the landlord chooses to serve the order by posting it on the door of the rental unit, the service of one order will be sufficient service on all tenants. If the landlord chooses to serve the order via registered mail, he must serve a copy of the order on each of the tenants individually.** If the tenants fail to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

Turning to the landlord's monetary claim, because the tenants are not co-tenants, they are not jointly and severally liable for each other's portion of the rent. No one tenant owes the landlord \$1,800.00 per month in rent; I find that this amount is the total income the landlord at one time received from the property each month and hopes to continue to receive. The landlord claimed that he was paid just \$1,000.00 in the month of December, which indicates that someone did not pay rent, but because the landlord has not provided records showing who he received payments from, I find that the landlord has not proven that any specific tenant should be held responsible for December's shortfall. I therefore dismiss the claim for rent owing for December as the landlord has failed to prove who failed to pay rent for that month. Because the landlord has only claimed \$5,000.00 of the arrears and the total of the months in which he was not paid exceeds that amount, it is unnecessary for me to consider his claim for loss of income for June.

DH testified that he has paid varying amounts of rent during the tenancy, but most recently, was obligated to pay \$600.00 per month. There is no evidence before me suggesting that DH occupies more than one third of the rental unit or that he should bear more than one third of the rent and as there seems to be no written tenancy agreement and as the landlord did not attend at the hearing to testify as to his individual arrangement with DH, I accept DH's testimony that his share of the rent was \$600.00 per month. As I noted earlier, I find that DH has failed to prove that if any rental payments were made in 2015, they should be credited to rent owing for 2015 as he testified that he was in arrears for much of the previous year. I therefore find that DH owes rent for the months of January – April inclusive totaling \$2,400.00 and that he has occupied the unit for the month of May without paying occupational rent which caused the landlord to lose \$600.00 in rental income for that month as well. I therefore find that DH owes the landlord \$3,000.00.

JF did not identify the amount of money he is responsible to pay each month, but again, there is no evidence before me suggesting that JF occupies more than one third of the

rental unit or that he should bear more than one third of the rent and as there seems to be no written tenancy agreement and as the landlord did not attend at the hearing to testify as to his individual arrangement with JF, I find it more likely than not that JF is responsible for one third of the income the landlord expected to receive each month and was obligated to pay \$600.00 per month in rent. JF acknowledged that he paid no rent in 2015 and as he occupied the unit throughout most of the month of May without paying occupational rent, I find that JF also owes the landlord \$3,000.00.

NS claimed that she was not obligated to begin paying the landlord rent until March 2015. I am satisfied that NS had an arrangement with IJ's mother and that her tenancy began as a sub-tenancy and converted to a direct tenancy relationship with the landlord at some point. As the landlord did not appear at the hearing and as the Agent had no knowledge of the involvement of IJ or his mother, I accept NS's testimony that she was not obligated to begin paying the landlord until March. I further find that although the landlord may have expected to receive a total of \$1,800.00 per month from this property, NS's tenancy began as a sub-tenancy and I find it very possible that she was obligated to pay less in rent pursuant to her agreement with IJ and his mother. In the absence of evidence to the contrary, I accept that NS was only obligated to pay \$375.00 per month. NS has not proven that she made any payments to the landlord in March, April or May and I find that she owes the landlord rent and occupational rent for each of those months. I find that NS owes the landlord a total of \$1,125.00.

The landlord is owed a total of \$7,125.00 but as he has limited his claim to \$5,000.00, I award him only \$5,000.00. I find that the landlord is entitled to recover his filing fee of \$50.00 as he has been successful in his claim and the tenants should equally share the cost of that filing fee. I divide the award proportionally between the tenants as follows.

I find that DH and JF are each responsible for approximately 42%, or \$2,100.00, of the \$5,000.00 entitlement plus each must pay 1/3 or \$16.66, of the \$50.00 filing fee. I order DH to pay the landlord \$2,116.66 and I grant the landlord a monetary order under section 67 for that amount. I order JF to pay the landlord \$2,116.66 and I grant the landlord a monetary order under section 67 for that amount.

I find that NS is responsible for 15.78%, or \$789.00 of the \$5,000.00 entitlement and must also pay 1/3, or \$16.66, of the \$50.00 filing fee. I order NS to pay the landlord \$805.66 and I grant the landlord a monetary order under section 67 for that amount.

I recognize that the total of the 3 awards is only \$5,038.98 when the landlord is entitled to the full \$5,000.00 claimed plus the \$50.00 filing fee, which totals \$5,050.00. However, in the interest of simplifying the arithmetic involved, I have truncated the

percentages in order to ensure that the tenants do not overpay their proportional amount.

Conclusion

The landlord is granted an order of possession effective against all three tenants and individual monetary orders against each of the tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 26, 2015

Residential Tenancy Branch

